

ASSEMBLY, No. 4034

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED APRIL 29, 2013

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Authorizes State Agriculture Development Committee to permit operation of certain microenterprises on certain preserved farms; designated as "New Jersey Rural Microenterprise Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the operation of microenterprises on preserved
 2 farms, amending P.L.2005, c.314, and designated as the "New
 3 Jersey Rural Microenterprise Act."

4
 5 BE IT ENACTED by the Senate and General Assembly of the State
 6 of New Jersey:

7
 8 1. Section 1 of P.L.2005, c.314 (C.4:1C-32.1) is amended to
 9 read as follows:

10 1. a. Any person who owns qualifying land **On which a**
 11 development easement was conveyed to, or retained by, the
 12 committee, a board, or a qualifying tax exempt nonprofit
 13 organization pursuant to the provisions of section 24 of P.L.1983,
 14 c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section
 15 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180
 16 (C.4:1C-43.1), or sections 37 through 40 of P.L.1999, c.152
 17 (C.13:8C-37 through C.13:8C-40) **may apply for a special permit**
 18 pursuant to this section to allow a **commercial nonagricultural**
 19 activity **rural microenterprise** to occur on the land.

20 b. The committee, in its sole discretion, may issue a special
 21 permit pursuant to this section to the **landowner if the development**
 22 easement is owned by the committee **owner of the premises** . The
 23 committee **and the board, in their joint discretion, may authorize**
 24 the committee to issue a special permit pursuant to this section to
 25 the landowner if the **shall provide the holder of any** development
 26 easement **is owned by a board. The committee and the qualifying**
 27 tax exempt nonprofit organization, in their joint discretion, may
 28 authorize the committee to issue a special permit pursuant to this
 29 section to the landowner if **on the farm with a copy of the**
 30 application submitted for the purposes of subsection a. of this
 31 section, and the holder of the development easement is owned by a
 32 qualifying tax exempt nonprofit organization shall have 30 days
 33 after the date of receipt thereof to provide comments to the
 34 committee on the application. Within 90 days after receipt of a
 35 completed application, submitted for the purposes of subsection a.
 36 of this section, the committee shall approve, approve with
 37 conditions, or disapprove the application.

38 c. (1) There shall be three categories of rural microenterprise
 39 activities, as follows:

40 (a) Class 1 shall include customary rural activities, which rely
 41 on the equipment and aptitude historically possessed by the
 42 agricultural community, including, but not limited to, snow
 43 plowing, bed and breakfasts, bakeries, woodworking, and craft-
 44 based businesses;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (b) Class 2 shall include agriculture support services, which
2 have a direct and positive impact on agriculture by supplying
3 needed equipment, supplies, and services to the surrounding
4 agricultural community, including, but not limited to, veterinary
5 practices, seed suppliers, and tractor or equipment repair shops; and

6 (c) Class 3 shall include unrelated microenterprises, which have
7 no direct relationship with the agricultural use of the property or the
8 surrounding agricultural community, including, but not limited to,
9 dog boarding services, professional office space, and personal
10 training studios.

11 (2) Class 1 and Class 2 activities shall be preferred for
12 permitting purposes:

13 d. A special permit may be issued pursuant to this section
14 provided that:

15 (1) the owner of the premises establishes, through the
16 submission of tax forms, sales receipts, or other appropriate
17 documentation, as directed by the committee, that (a) the qualifying
18 land is a commercial farm as defined pursuant to section 3 of
19 P.L.1983, c.31 (C.4:1C-3) , and (b) the owner of the premises is a
20 farmer, as defined pursuant to subsection i. of this section;

21 (2) **【there is no commercial nonagricultural activity already in**
22 **existence on the land at the time of application for the special**
23 **permit or on any portion of the farm that is not subject to the**
24 **development easement, except that the committee may waive the**
25 **requirements of this paragraph, either entirely or subject to any**
26 **appropriate conditions, (a) if such preexisting commercial**
27 **nonagricultural activity is deemed to be of a minor or insignificant**
28 **nature or to rely principally upon farm products, as defined**
29 **pursuant to R.S.4:10-1, derived from the farm, or (b) for other good**
30 **cause shown by the applicant;】** the owner of the premises, or an
31 immediate family member thereof, is the same person who owns
32 and operates the rural microenterprise;

33 (3) the permit is for one 【commercial nonagricultural activity】
34 rural microenterprise only;

35 (4) no more than one permit 【may be】 is valid at any one time
36 for use on the qualifying land;

37 (5) the permit is for a maximum duration of 20 years
38 **【duration】;**

39 (6) the permit does not run with the land and may not be
40 assigned;

41 (7) **【the commercial nonagricultural activity utilizes, or is**
42 **supported through the occupation of, a structure or structures**
43 **existing on the date of enactment of this act, except that the permit**
44 **may authorize, subject to the requirements of paragraph (12) of this**
45 **subsection, an expansion of an existing structure or structures which**
46 **expansion does not exceed 500 square feet in footprint area in total**

1 for all of the structures, provided that, for any such expansion, the
2 applicant demonstrates to the satisfaction of the committee that:

3 (a) the purpose or use of the expansion is necessary to the
4 operation or functioning of the commercial nonagricultural activity;

5 (b) the area of the proposed footprint of the expansion is
6 reasonably calculated based solely upon the demands of
7 accommodating the commercial nonagricultural activity and does
8 not incorporate excess space; and

9 (c) the location, design,, height, and aesthetic attributes of the
10 expansion reflect the public interest of preserving the natural and
11 unadulterated appearance of the landscape and structures;

12 (8) the [commercial nonagricultural activity] rural
13 microenterprise does not interfere with the use of the qualifying
14 land for agricultural production;

15 [(9)] (8) the [commercial nonagricultural activity] rural
16 microenterprise utilizes the land and structures in their existing
17 condition [except as allowed otherwise pursuant to paragraph (7) of
18 this subsection] , and is undertaken in compliance with the use
19 restrictions prescribed by subsection e. of this section ;

20 [(10)] (9) the [commercial nonagricultural activity] total area
21 of land and structures devoted to supporting the rural
22 microenterprise does not exceed a one-acre envelope on the
23 qualifying land;

24 (10) the rural microenterprise does not have an adverse impact
25 upon the soils, water resources, air quality, or other natural
26 resources of the land or the surrounding area [, and does not
27 involve the creation of additional parking spaces whether paved or
28 unpaved] ; and

29 (11) the [commercial nonagricultural activity] rural
30 microenterprise is not a high traffic volume business [; and (12)
31 any necessary local zoning and land use approvals and any other
32 applicable] , and is undertaken in compliance with the parking and
33 employment restrictions prescribed by subsection f. of this section.

34 e. The use of land and structures for a rural microenterprise
35 activity shall be subject to the following conditions and restrictions:

36 (1) A structure that is designated in the deed of easement as
37 agricultural labor housing, or a structure that has been constructed
38 or designated as agricultural labor housing since the date of the
39 conveyance of the easement, shall not be used for the rural
40 microenterprise;

41 (2) No new buildings may be constructed on the premises to
42 support a rural microenterprise. Any building constructed on the
43 premises since the date of the conveyance of the easement, and in
44 accordance with the farmland preservation deed restrictions, shall
45 not be eligible for a special permit for a rural microenterprise for a
46 period of five years following completion of its construction;

1 (3) Improvements shall not be made to the interior of a non-
2 residential structure in order to adapt it for residential use;

3 (4) No more than 2,500 square feet of the interior of an existing
4 residential or agricultural structure may be substantially altered or
5 finished to support the rural microenterprise, except that, at the
6 request of the owner of the premises, the committee may allow the
7 alteration or finishing of up to 100 percent of the interior of an
8 existing historic building or structure, provided that the owner
9 agrees to place on the structure, in a form approved by the
10 committee, an historic preservation restriction, which shall be
11 recorded against the premises, and shall run with the land;

12 (5) The expansion of an existing structure shall be permitted,
13 provided that: (a) the expansion does not exceed 500 square feet in
14 total footprint area; (b) the purpose or use of the expansion is
15 necessary to the operation or functioning of the rural
16 microenterprise; and (c) the area of the proposed footprint of the
17 expansion is reasonably calculated, based solely upon the demands
18 of accommodating the rural microenterprise, and does not
19 incorporate excess space;

20 (6) Improvements to the exterior of a structure shall be
21 compatible with the agricultural character of the premises, and shall
22 not diminish the historic character of the structure;

23 (7) The location, design, height, and aesthetic attributes of the
24 rural microenterprise shall reflect the public interest of preserving
25 the natural and unadulterated appearance of the landscape and
26 structures;

27 (8) No public utilities, including water, gas, or sewage, other
28 than those already existing and available on the qualifying land,
29 shall be permitted to be extended to the qualifying land for purposes
30 of the rural microenterprise, except that the establishment of new
31 electric service required for the rural microenterprise shall be
32 permitted; and

33 (9) No more than a combined total of 5,000 square feet of land
34 may be utilized for the establishment, expansion, or improvement of
35 wastewater or water supply facilities, or for the storage of
36 equipment, vehicles, supplies, products, or by-products, in
37 association with the microenterprise. Any improvements to the
38 land, which are undertaken for the purposes described in this
39 paragraph, shall be limited to those that are necessary either to
40 protect public health and safety or to minimize disturbance of the
41 premises and its soil and water resources.

42 f. Parking and employment at a rural microenterprise shall be
43 subject to the following conditions and restrictions:

44 (1) The area dedicated to parking shall not exceed 2,000 square
45 feet or provide for more than 10 parking spaces;

46 (2) Each parking space shall not exceed 10 feet by 20 feet in
47 size;

1 (3) Improvements to the parking area shall be limited to those
2 that are required to protect public health and safety or minimize the
3 disturbance of soil and water resources on the premises;

4 (4) At peak operational periods, the maximum number of
5 employees or workers associated with the rural microenterprise
6 shall not exceed four full-time employees, or the equivalent, in
7 addition to the owner or operator; and

8 (5) the number of employees and visitors to the rural
9 microenterprise, and the volume and frequency of deliveries and
10 truck and other vehicle traffic associated therewith shall not, at any
11 time, exceed the number of designated parking spaces on the
12 qualifying land, or create a nuisance for neighboring properties or
13 the municipality.

14 g. Committee approval of a special permit for a rural
15 microenterprise activity pursuant to this section shall not relieve the
16 applicant from obtaining all other permits, approvals , or
17 authorizations that may be required by federal, State, or local law,
18 rule, regulation, or ordinance **【**are obtained for the commercial
19 nonagricultural activity.

20 d. In addition to those factors enumerated under subsection c.
21 of this section, the committee, in evaluating an application for a
22 special permit, shall also consider such additional factors as traffic
23 generated and the number of employees required by the proposed
24 commercial nonagricultural activity so as to limit to the maximum
25 extent possible the intensity of the activity and its impact on the
26 land and the surrounding area**】** .

27 h. (1) A rural microenterprise shall not be considered to be an
28 agricultural use as defined in subsection b. of section 3 of P.L.1983,
29 c.32 (C.4:1C-13).

30 (2) Nothing in this section shall be interpreted as providing a
31 rural microenterprise with protection under section 6 of the “Right
32 to Farm Act,” P.L.1983, c.31 (C.4:1C-9) if that rural
33 microenterprise is not otherwise eligible for such protection.

34 **【e.】** i. For the purposes of this section:

35 **【**“Commercial nonagricultural activity” shall not include a
36 personal wireless service facility as defined and regulated pursuant
37 to section 2 of this act;**】**

38 “Farmer” means the owner and operator of the premises who,
39 exclusive of any income received from the rental of lands, realized
40 gross sales of at least \$2,500 for agricultural or horticultural
41 products produced on the premises during the calendar year
42 immediately preceding submission of a special permit application.

43 “Historic building or structure” means the same as that term is
44 defined pursuant to subsection c. of section 2 of P.L.2001, c.405
45 (C.13:8C-40.2).

1 “Historic preservation restriction” means the same as that term is
 2 defined pursuant to subsection d. of section 2 of P.L.1979, c.378
 3 (C.13:8B-2).

4 “Immediate family member” means a spouse, child, parent,
 5 sibling, grandparent, grandchild, father-in-law, mother-in-law, son-
 6 in-law, daughter-in-law, stepparent, stepchild, stepbrother,
 7 stepsister, half brother, or half sister of the owner of the premises,
 8 whether the individual is related by blood, marriage, or adoption.

9 “Owner of the premises” means the person who owned
 10 qualifying land on the date on which a development easement was
 11 conveyed to, or retained by, the committee, a board, or a qualifying
 12 tax exempt nonprofit organization, and who has continuously
 13 owned the qualifying land since that date; or an immediate family
 14 member of such person; or, in cases where such person applied for
 15 and was issued a permit for a rural microenterprise, all successors in
 16 title thereto.

17 “Qualifying land” means a farm [that was preserved for farmland
 18 preservation purposes] on which a development easement was
 19 conveyed to, or retained by, the committee, a board, or a qualifying
 20 tax exempt nonprofit organization prior to the date of enactment of
 21 [this act under any of the laws cited in subsection a. of this section]
 22 P.L. , c. (C.) (pending before the Legislature as this bill),
 23 and in accordance with the provisions of section 24 of P.L.1983,
 24 c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section
 25 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180
 26 (C.4:1C-43.1), or sections 37 through 40 of P.L.1999, c.152
 27 (C.13:8C-37 through C.13:8C-40), and for which no portion of the
 28 farm was excluded from preservation in the deed of easement [from
 29 preservation; and] .

30 “Qualifying tax exempt nonprofit organization” [shall have the
 31 same meaning as set forth in] means the same as that term is
 32 defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3).

33 “Rural microenterprise” means a small-scale business or activity
 34 that is fully compatible with agricultural use and production on the
 35 premises, does not, at any time, detract from, diminish, or interfere
 36 with the agricultural use of the premises, and is incidental to the
 37 agricultural use of the premises. “Rural microenterprise” shall not
 38 include a personal wireless service facility as defined and regulated
 39 pursuant to section 2 of P.L.2005, c.314 (C.4:1C-32.2).

40 (cf: P.L.2005, c.314, s.1)

41
 42 2. Section 3 of P.L.2005, c.314 (C.4:1C-32.3) is amended to
 43 read as follows:

44 3. a. The application fee for a special permit authorized
 45 pursuant to [either] section 1 [or] of P.L.2005, c.314 (C.4:1C-
 46 32.1) shall be \$250. The application fee for a special permit
 47 authorized pursuant to section 2 of [this act] P.L.2005, c.314

1 (C.4:1C-32.2) shall be \$1,000 **[,]** . All application fees shall be
2 payable to the committee regardless of whether or not a permit is
3 issued. All proceeds from the collection of application fees by the
4 committee pursuant to **[this act]** P.L.2005, c.314 (C.4:1C-32.1 et
5 seq.) shall be utilized by the committee for farmland preservation
6 purposes.

7 b. The committee may suspend or revoke a special permit
8 issued pursuant to **[either]** section 1 or **[section]** 2 of **[this act for a**
9 violation of] P.L.2005, c.314 (C.4:1C-32.1 or C.4:1C-32.2) if the
10 permittee violates any term or condition of the permit or any
11 provision of the **[respective]** applicable statutory section.

12 c. **[The committee shall, within 60]** (1) In order to expedite
13 the review and approval of routine applications for a special permit,
14 which have been submitted pursuant to section 1 or 2 of P.L.2005,
15 c.314 (C.4:1C-32.1 or C.4:1C-32.2), the committee may delegate to
16 its executive director, by resolution, the authority to review and
17 approve an application. The delegation of review and approval
18 authority pursuant to this subsection shall be authorized by the
19 committee only in those cases where (a) the committee has not
20 received comments from the board or a qualifying nonprofit
21 organization concerning the potential negative impacts of an
22 application's approval, and (b) the application complies with all
23 provisions of P.L.2005, c.314 (C.4:1C-32.1 et seq.) and the rules
24 and regulations adopted pursuant thereto.

25 (2) An applicant whose application is denied by the executive
26 director may appeal the decision to the committee.

27 (3) Nothing in this subsection shall preclude the executive
28 director from bringing any application before the committee for
29 review and approval, when such action is deemed by the executive
30 director to be appropriate.

31 d. If an applicant is aggrieved by an action of the committee,
32 which has been undertaken pursuant to P.L.2005, c.314 (C.4:1C-
33 32.1 et seq.) in association with an application for, or suspension or
34 revocation of, a special permit, the applicant may submit to the
35 committee, a written request for a hearing on the matter, within 20
36 days after receipt of notice of the committee's action.

37 e. Within 180 days after the date of enactment of **[this act,**
38 develop guidelines for the implementation and administration of
39 this act, including, but not limited to] P.L. , c. (C.)
40 (pending before the Legislature as this bill), the committee shall
41 adopt rules and regulations, pursuant to the "Administrative
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as is
43 necessary to implement and administer the provisions of P.L.2005,
44 c.314 (C.4:1C-32.1 et seq.), as amended by P.L. , c. (C.)
45 (pending before the Legislature as this bill). These rules and
46 regulations shall include, at a minimum , procedures and standards
47 for the filing, evaluation, and approval of special permit

1 applications, which procedures and standards shall seek to balance,
2 as equally important concepts, the public interest in : (1)
3 protecting farmland from further development as a means of
4 preserving agriculture **and** ; (2) protecting historically significant
5 agricultural structures and enhancing the beauty and character of the
6 State and the local communities where farmland has been preserved
7 **with the public interest in** ; **and** (3) providing support to sustain
8 and strengthen the agricultural industry in the State.

9 **d.** f. Every two years, the committee shall prepare a report on
10 the implementation of **this act** P.L.2005, c.314 (C.4:1C-32.1 et
11 seq.), as amended by P.L. , c. (C.) (pending before the
12 Legislature as this bill) . The report shall include a survey and
13 inventory of:

14 (1) all **commercial nonagricultural** rural microenterprise
15 activities occurring on , and **of** all personal wireless service
16 facilities placed on **preserved farmland** in accordance with
17 **this act** the provisions of P.L.2005, c.314 (C.4:1C-32.1 et seq.);

18 (2) the extent to which existing structures, such as barns, sheds,
19 and silos, are used for **those** the purposes identified in paragraph
20 (1) of this subsection , and **how** the manner in which those
21 existing structures have been modified **therefor** to serve those
22 purposes ;

23 (3) the extent to which new structures, instead of existing
24 structures, have been erected to host personal wireless service
25 facilities and the number and type of new structures used to
26 disguise those facilities, such as artificial trees and faux barns,
27 sheds, and silos;

28 (4) the extent to which historically significant structures have
29 been protected through the placement thereon of historic
30 preservation restrictions; and **such**

31 (5) any other information **as** the committee deems useful.

32 **The** Any report prepared pursuant to this subsection shall be
33 transmitted to the Governor, and, in accordance with the provisions
34 of section 2 of P.L.1991, c.164 (C.52:14-19.1), to the President of
35 the Senate , and the Speaker of the General Assembly, as well as
36 to the respective chairpersons of the Senate Economic Growth
37 Committee, the Senate Environment and Energy Committee, the
38 Assembly Agriculture and Natural Resources Committee, and the
39 Assembly Environment and Solid Waste Committee or their
40 designated successors. Copies of the report shall also be made
41 available to the public upon request and free of charge, and shall be
42 posted at a publicly-accessible location on the committee's Internet
43 website **of the State Agriculture Development Committee.**

44 e. The committee shall adopt, pursuant to the "Administrative
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and

1 regulations necessary to carry out the purposes of this act】 .
2 (cf: P.L.2005, c.314, s.3)

3
4 3. This act shall take effect immediately.

5
6
7 STATEMENT

8
9 This bill, designated as the “New Jersey Rural Microenterprise
10 Act,” would support the viability of family farms in the State by
11 enhancing the ability of certain owners of preserved farmland to
12 expand the economic activity taking place on that land in a manner
13 that is consistent with the objectives of the State’s farmland
14 preservation program. The bill would further provide an
15 opportunity and means to protect historically significant barns and
16 other farm structures that contribute to the State’s rural landscape
17 and history.

18 Existing law authorizes the State Agricultural Development
19 Committee (SADC) to issue a special permit to allow a commercial
20 nonagricultural activity to occur on preserved farmland. The bill
21 would amend this existing law in order to correct any past inequity
22 in the farmland preservation program application process, whereby
23 a farm owner was potentially unaware of, or was denied, the
24 opportunity to take an exception, or to exclude any part of his or her
25 farm from the application, at the time of preservation, which
26 exception or exclusion would have enabled the farm owner to
27 conduct nonagricultural activities on a portion of the farm.

28 Specifically, the bill would authorize certain preserved farm
29 owners to apply to the committee for a special permit that would
30 allow the farm owner to undertake a rural microenterprise on the
31 farm premises. These rural microenterprises could include:

32 (1) customary rural activities, such as snow plowing, bed and
33 breakfasts, bakeries, woodworking, and craft-based businesses;

34 (2) agriculture support services that are useful to the surrounding
35 agricultural community, such as veterinarian practices, seed
36 suppliers, and tractor or equipment repair shops; or

37 (3) microenterprises that are unrelated to agriculture or the
38 surrounding agricultural community, such as dog kennels,
39 professional office space, or personal training studios.

40 The bill would require the SADC to give preference to the
41 microenterprise activities identified in categories (1) and (2), and it
42 would permit the development of nonagricultural microenterprises
43 only if they are compatible with agriculture and do not interfere
44 with the agricultural use of the preserved farmland.

45 The bill would prohibit the use of newly-constructed buildings,
46 and the substantial alteration of any existing residential or
47 agricultural structure beyond an area of 2,500 square feet, in order
48 to support a rural microenterprise. However, it would authorize the

1 SADC to allow for the alteration, conversion, or completion of up
2 to 100 percent of the interior of an existing historic building or
3 structure on preserved farmland, provided that the owner agrees to
4 record on the structure an historic preservation restriction that
5 would run with the land.

6 The bill would authorize the issuance of a special permit
7 provided that:

8 (1) the owner of the premises establishes, through the
9 submission of tax forms, sales receipts, or other appropriate
10 documentation, as directed by the committee, that the qualifying
11 land is a commercial farm, and that the owner of the premises is a
12 farmer;

13 (2) the owner of the premises, or an immediate family member
14 thereof, is the same person who owns and operates the rural
15 microenterprise;

16 (3) the permit is for one rural microenterprise only;

17 (4) no more than one permit is valid at any one time for use on
18 the qualifying land;

19 (5) the permit is for a maximum duration of 20 years;

20 (6) the permit does not run with the land and may not be
21 assigned;

22 (7) the rural microenterprise does not interfere with the use of
23 the qualifying land for agricultural production;

24 (8) the rural microenterprise utilizes the land and structures in
25 their existing condition, and is undertaken in compliance with
26 various use restrictions prescribed by the bill;

27 (9) the total area of land and structures devoted to supporting
28 the rural microenterprise does not exceed a one-acre envelope on
29 the qualifying land;

30 (10) the rural microenterprise does not have an adverse impact
31 upon the soils, water resources, air quality, or other natural
32 resources of the land or the surrounding area; and

33 (11) the rural microenterprise is not a high traffic volume
34 business, and is undertaken in compliance with parking and
35 employment restrictions prescribed by the bill.

36 By protecting the agricultural use of preserved farmland and
37 promoting the preservation of historically significant agricultural
38 structures, this bill will help affected farm families maintain the
39 viability of their preserved farms for generations to come, while
40 continuing to protect the public investment in farmland
41 preservation.